

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0240-R-R

Modified on Reconsideration
Ineligible December 31, 2017 to February 3, 2018

PROCEDURAL HISTORY: On January 12, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work and did not actively seek work from December 31, 2017 to January 6, 2018 (decision # 92340). Claimant filed a timely request for hearing. On March 1, 2018, ALJ Griffin conducted a hearing, and on March 2, 2018 issued Order No. 18-UI-104323, concluding claimant was not available for work from December 31, 2017 to February 10, 2018. On March 7, 2018, claimant filed an application for review with the Employment Appeals Board (EAB). On April 10, 2018, EAB issued Appeals Board Decision 2018-EAB-0240, adopting the ALJ's Order. On April 30, 2018, claimant filed a timely request for reconsideration with EAB. On May 10, 2018, claimant filed a petition for judicial review with the Oregon Court of Appeals (CA A167777). On May 31, 2018, EAB issued Appeals Board Decision 2018-EAB-0240-R, allowing reconsideration and re-adopting Order no. 18-UI-104323.¹ On June 26, 2018, claimant filed an amended petition for judicial review. On July 12, 2018, claimant filed with the Oregon Employment Department a motion to correct the record. On July 13, 2018, claimant filed with the Oregon Employment Department a corrected motion to correct the record. On September 12, 2018, EAB issued an order denying claimant's corrected motion to correct the record. Also on September 12, 2018, EAB withdrew its decision in this matter for reconsideration pursuant to ORS 183.482(6) and ORAP 4.35. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Order No. 18-UI-104323 is modified to reflect that the period at issue is December 31, 2017 to February 3, 2018.

ORS 657.290(3) provides that EAB "may in its discretion . . . reconsider any previous decision of the Employment Appeals Board" and "may include the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." In Appeals Board Decisions 2018-EAB-0240 and 2018-EAB-0240-R, EAB adopted the findings of fact and conclusions of law set forth in Order No. 18-UI-104323, including that the period at issue and ineligibility period in claimant's case

¹ EAB did not receive notice of claimant's filing until July 3, 2018, and thus issued Appeals Board Decision 2018-EAB-0240-R without knowledge of claimant's petition for judicial review.

included the week of February 4, 2018 through February 10, 2018. *See* Order No. 18-UI-104323 at 1, 4. The ALJ erred in doing so, however, because the week of February 4, 2018 through February 10, 2018 was not at issue in this case and no facts were developed about claimant's eligibility for benefits during that week. It was therefore error for EAB to adopt Order No. 18-UI-104323 with respect to that week.²

On reconsideration, Order No. 18-UI-104323 is adopted as modified herein to exclude the week of February 4, 2018 through February 10, 2018. The portions of Appeals Board Decisions 2018-EAB-0240 and 2018-EAB-0240-R in which EAB addressed claimant's written arguments are, likewise, adopted as modified to exclude the week of February 4, 2018 through February 10, 2018. For the reasons set forth in Order No. 18-UI-104323, Appeals Board Decision 2018-EAB-0240 and Appeals Board Decision 2018-EAB-0240-R as modified, claimant was not eligible for benefits for the weeks including December 31, 2017 through February 3, 2018.

DECISION: On reconsideration, Order No. 18-UI-104323 is modified, as outlined above.

J. S. Cromwell and S. Alba;
D. P. Hettle, not participating.

DATE of Service: October 3, 2018

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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² In so finding, we note that decision # 92340, issued by the Department on January 12, 2018, states that claimant was "DENIED benefits on this claim for the period beginning December 31, 2017 until the reason for your denial has ended." Emphasis in original. It is therefore possible that the Department has denied claimant benefits on an ongoing basis during weeks claimed after February 3, 2018. For purposes of EAB's *de novo* review of the record developed at the March 1st hearing in this case, however, the inquiry stopped as of February 3, 2018, and EAB erred in including the additional week in our decision.